

ENCROACHMENT AGREEMENT

This Encroachment Agreement is made and entered into this day by and between NDC Southaven, L.P., a Mississippi limited partnership ("NDC"), Trustmark National Bank, a Mississippi banking association ("Trustmark"), and Stanley M. Cohen and Eliot D. Cohen (the "Cohens").

W I T N E S S E T H:

WHEREAS, the Cohens are the owners and Lessors of that certain real property described in a lease recorded in Book 45 at page 603 of the Land Records of DeSoto County, Mississippi (the "Leasehold Property"); and

WHEREAS, Trustmark is the Lessee under the aforesaid lease and is thus the tenant in possession of the Leasehold Property; and

WHEREAS, NDC is the owner of certain property adjoining the Leasehold Property which NDC acquired by Warranty Deed recorded in Book 273 at Page 545; and

WHEREAS, it has come to the attention of the parties hereto that a drive-through teller lane improvement to the Leasehold Property encroaches onto the property of NDC, as more particularly shown on the plat attached as Exhibit "A" hereto, said encroachment being fully described by metes and bounds in Exhibit "B" attached hereto; and

WHEREAS, the parties have agreed that the encroachment may remain under certain terms and conditions and now desire to memorialize those terms and conditions as follows, to-wit:

I.

NDC hereby grants to the Cohens and Trustmark a limited license for said encroachment as described in Exhibit "B" hereto, said license to exist only so long as said encroachment area is utilized as a drive-through teller lane by Trustmark, the Cohens, their grantees, lessees and/or successors in interest.

II.

Trustmark and the Cohens acknowledge that NDC has given its permission and granted to them a limited license for the use of the area of the encroachment and in consideration thereof, agree to maintain the drive-through teller lane in good repair and further agree to indemnify and hold NDC, its lessees, grantees and successors in interest harmless from any and all claims that may arise from the use of the encroachment area by Trustmark, the Cohens or third parties.

III.

The Cohens and Trustmark acknowledge that their use of the encroachment area is in no way adverse to NDC and further acknowledge that the statute of limitations for adverse use of the encroachment area has not run and shall not commence to run so long as this license agreement is in effect. Trustmark and the Cohens further acknowledge that, subject to the license herein granted, neither Trustmark, nor the Cohens or their grantees, lessees and/or successors in interest shall have any present or future claim, right, title or interest in and to the encroachment area.

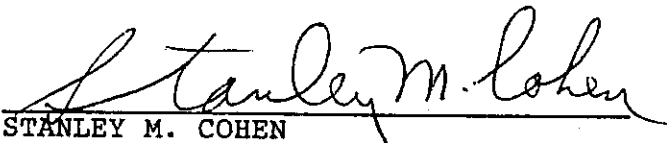
IV.

The encroachment may remain only so long as it is utilized by Trustmark, the Cohens, their grantees, lessees and/or successors in interest as a drive-through teller lane. If and when the encroaching lane shall cease to be used as a drive-through teller lane, the license granted hereunder shall immediately terminate and the Cohens and Trustmark, or their grantees, lessees and/or successors in interest shall restore the encroachment area to its original condition, prior to improvement.


V.

The encroachment area shall not be further improved or modified without the express written consent of the owner of the encroachment area.

WITNESS the signatures of the parties hereto on the respective dates shown, but effective as of July 24, 1995.


STANLEY M. COHEN

DATE: JUL 24 1995


ELIOT D. COHEN

DATE: 7/24/95

STATE OF Miss.
COUNTY OF Carroll

THIS DAY personally appeared before me, the undersigned authority within and for the state and county aforesaid, STANLEY M. COHEN, who acknowledged that he signed, executed and delivered the above and foregoing instrument on the day and year therein mentioned.

GIVEN under my hand and official seal on this the 24 day of July, 1995.

Marjorie W. Smith
NOTARY PUBLIC

My Commission Expires:
My Commission Expires On July 28, 1995.

STATE OF Miss.
COUNTY OF Carroll

THIS DAY personally appeared before me, the undersigned authority within and for the state and county aforesaid, ELIOT D. COHEN, who acknowledged that he signed, executed and delivered the above and foregoing instrument on the day and year therein mentioned.

GIVEN under my hand and official seal on this the 24 day of July, 1995.

Marjorie W. Smith
NOTARY PUBLIC

My Commission Expires:
My Commission Expires On July 28, 1995.

BOOK

69 PAGE 363

BOOK

288 PAGE 596

TRUSTMARK NATIONAL BANK

BY: *A. L. Huff*TITLE: Vice PresidentDATE: July 24, 1995

STATE OF Mississippi
COUNTY OF Desoto

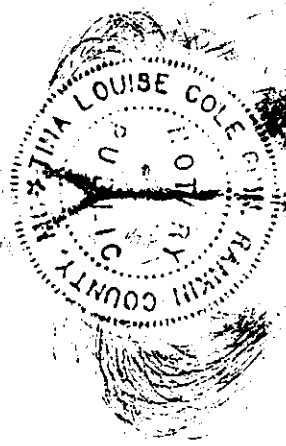
PERSONALLY appeared before me, the undersigned authority in and for the said county and state, the within named A. L. Huff, who acknowledged that he/she is Vice President of TRUSTMARK NATIONAL BANK, and that for and on behalf of the said corporation, and as its act and deed, he/she signed, sealed and delivered the above and foregoing instrument after first having been duly authorized by said corporation so to do.

GIVEN under my hand and official seal on this the 24th day of July, 1995.

Lisa Louise Cole
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Jan. 12, 1999



NDC SOUTHAVEN, L.P.

A MISSISSIPPI LIMITED PARTNERSHIP

BY: Haven, L.L.C. General Partner

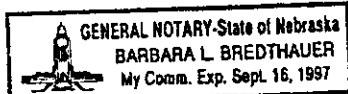
BY: Harlan J. NoddleTITLE: Harlan J. Noddle, PresidentDATE: July 24, 1995STATE OF NebraskaCOUNTY OF Douglas

I do hereby certify that on this 24th day of July, 1995, before me, Barbara L. Bredthauer, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Harlan J. Noddle known to me to be the President of Haven, L.L.C., a Nebraska Limited Liability Company, general partner of NDC Southaven, L.P., a Mississippi Limited Partnership, who, being by me duly sworn, did depose and say that he/~~she~~ resides in Omaha, Nebraska; that he/~~she~~ is the President of Haven, L.L.C., the general partner of NDC Southaven, L.P., the limited liability company and the partnership described in and which executed the foregoing instrument; that, on behalf of said partnership and limited liability company and with due authority he/she signed and delivered said instrument for the uses and purposes therein set forth, as its and his/her free and voluntary act; and that he/she signed his/her name thereto by like order.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Barbara L. Bredthauer
NOTARY PUBLIC

My Commission Expires:

September 16, 1997

CHD = N 18°18'44" E 29.28'
R = 44.27' L = 29.84'

N.D.C. SOUTHAVEN L.P.
(717-440)

N 33°26'30" W
18.90'

S 01°21'40" E
43.95'

N 00°59'50" W
25.51'

58.97'
175.02' (TOTAL)

AREA OF ENCROACHMENT
549 SQ. FT.

TRUST MARK BANK

BANK OF HERNANDO
LEASE BK 45 603

STATE LINE ROAD

FISHER & ARNOLD, INC.

3205 PLAYERS CLUB PKWY.
MEMPHIS, TENNESSEE 38125
(901) 748-1811

**ENCROACHMENT DETAIL
UPON**

**N.D.C. SOUTHAVEN, L.P. PROPERTY
INSTRUMENT 717-440**

DRAWN: RTS

REVISIONS:

DATE: JUNE, 1995

SCALE: 1" = 30'

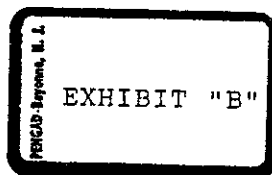
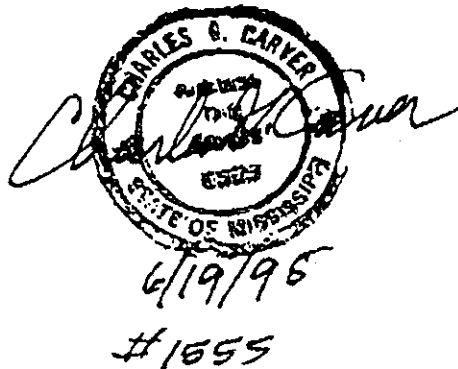
1 OF 1
SHEET

EXHIBIT "A"

Commencing at an iron rod (found) in the north line of State Line Road (160-foot R.O.W.); said point being 2,519.15 feet east of the west line of Section 13, Township 1 South, Range 8 West, in DeSoto County, Mississippi, and being further described as the southwest corner of the Bank of Hernando lease area as described in Lease Book 45, Page 603; thence N $01^{\circ}21'40''$ W, and with the west line of said lease area, a distance of 58.97 feet to the true POINT OF BEGINNING; thence N $33^{\circ}26'30''$ W a distance of 18.90 feet to a point; thence N $00^{\circ}59'50''$ W a distance of 28.51 feet to a point; thence along a curve to the right having a radius of 44.27 feet an arc distance of 29.84 feet (chord = N $18^{\circ}18'44''$ E - 29.28 feet) to a point in the west line of said lease area; thence S $01^{\circ}21'40''$ E, and with said west line, a distance of 72.09 feet to the POINT OF BEGINNING and containing 549 square feet.

Located in SW 1/4

c:\wp51\user\hmsr\wpshave!!



PREPARER'S STATEMENT

TYPE OF INSTRUMENT:

Encroachment Agreement

PREPARER'S NAME AND ADDRESS:

William A. Baskin
Holcomb, Dunbar, Connell, Chaffin & Willard, P.A.
P.O. Box 190
Southaven, MS 38671
601-342-6806

TENDERED FOR RECORDING BY (PLEASE RETURN TO):

William A. Baskin
Holcomb, Dunbar, Connell, Chaffin & Willard, P.A.
P.O. Box 190
Southaven, MS 38671
601-342-6806

STATE MS.-DE SOTO CO.
FILED

JUL 31 1 06 PM '95

PIA 69 359
BKWT-288 PG 592
W.E. DAVIS CH. CLK.
by: C. R. Stanley Jr.